

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
KRCA License, LLC) File No.: EB-FIELDWR-13-00007251
) NAL/Acct. No.: 201432800003
Licensee of Station KPNZ) FRN: 0020239414
Ogden, UT) Facility ID No.: 77512
)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 6, 2014

Released: February 7, 2014

By the District Director, Denver Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that KRCA License, LLC (KLL), licensee of Station KPNZ (Station) serving Ogden, Utah, apparently willfully and repeatedly violated Section 11.35(a) of the Commission’s rules (Rules) by failing to maintain operational Emergency Alert System (EAS) equipment and logs. We conclude that KLL is apparently liable for a forfeiture in the amount of nine thousand dollars (\$9,000).

II. BACKGROUND

2. Station KPNZ is a full-power television broadcast station licensed to the community of Ogden, Utah, with a main studio in Salt Lake City, Utah. On February 7, 2013, an agent of the Enforcement Bureau’s Denver Office (Denver Office) inspected the Station at its Salt Lake City main studio location. At the time of the inspection, only an EAS receiver was located at the main studio and employees were unable to make any EAS records available for inspection. Station employees advised the Denver agent that the EAS unit was located at the station’s Master Control in Burbank, California.

3. The following day, February 8, 2013, a KLL employee from the Burbank office contacted the agent, and confirmed that KLL did not have any EAS records for the Station. The representative emailed the agent later the same day, and provided documentation regarding the Station’s EAS operation, which included a log of EAS Required Weekly Tests (RWTs) that were generated from the station’s unit in Burbank. The log only included RWTs that the Station had transmitted on February 7 and 8, 2013. The email also included a schematic for the remote operation of the Station’s EAS equipment, illustrating how the EAS equipment in Burbank communicated with the EAS receiver and the broadcast transmitter, both located in Utah.

4. On May 16, 2013, the Denver Office issued a Notice of Violation (NOV) to KLL for multiple violations of the EAS Rules because of its failure to produce any records related to the Station’s EAS and the operational status of the unit, including logs related to EAS tests and deficiencies. In its

1 47 C.F.R. § 11.35(a).

2 See License File No. BLCDDT-20090617ABF, granted August 24, 2010.

3 See KRCA License, LLC, Notice of Violation, V201332800049 LLC (May 16, 2013) (NOV). The noted violations (continued....)

NOV Response, KLL stated that the Station's EAS equipment "was not in fact regularly monitoring the required local EAS sources, the required weekly and monthly tests were not being properly and regularly received and transmitted, and a record of the deficiencies had not been made regularly in the station logs."⁴ KLL also stated that "the EAS equipment was not properly generating EAS logs as it is designed to do."⁵

III. DISCUSSION

5. Section 503(b) of the Communications Act of 1934, as amended (Act), provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁶ Section 312(f)(1) of the Act defines "willful" as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.⁷ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁸ and the Commission has so interpreted the term in the Section 503(b) context.⁹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁰ The term "repeated" means the commission or omission of such act more than once or for more than one day.¹¹

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included: 47 C.F.R. § 11.35(a) (EAS equipment monitoring and transmitting functions must be available during the time the station is in operation and failure to receive EAS tests must be logged by the station); 47 C.F.R. § 11.52(d) (EAS Participants must monitor two EAS sources); 47 C.F.R. § 11.61(a)(1)(i) (Required Monthly Tests must be transmitted within 60 minutes of receipt by EAS Participants); 47 C.F.R. § 11.61(a)(2)(i)(A) (Required Weekly Tests must be conducted at least once a week on random days); 47 C.F.R. § 11.61(b) (Log entries must be made in EAS Participants' records).

⁴ Response to Notice of Violation of KRCA License, LLC (Jun. 4, 2013) (on file in EB-FIELDWR-13-00007251) at 2 (NOV Response).

⁵ *Id.* KLL also stated, supported by declarations made under penalty of perjury, that the EAS equipment had been reprogrammed to ensure that all required monthly tests are received and relayed and that all RWTs are appropriately transmitted. KLL also supplied an employee training and equipment testing plan for the Station to ensure future compliance. *See Id.* at 1-4, Attachments A-C.

⁶ 47 U.S.C. § 503(b).

⁷ 47 U.S.C. § 312(f)(1).

⁸ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in Section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission's application of those terms").

⁹ *See, e.g., Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹⁰ *See, e.g., Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator's repeated signal leakage).

¹¹ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." *See Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

A. Failure to Maintain Operational EAS Equipment and Logs

6. Every broadcast station is part of the nationwide EAS network and is categorized as a participating national EAS source.¹² The EAS enables the President and state and local governments to provide immediate communications and information to the general public.¹³ State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from the sources such as the National Weather Service or local emergency management officials.¹⁴ Required monthly and weekly tests originate from EAS Local or State Primary sources and must be retransmitted by the participating station. As the nation's emergency warning system, the EAS is critical to public safety, and we recognize the vital role that broadcasters play in ensuring its success. The Commission takes seriously any violations of the Rules implementing the EAS and expects full compliance from its licensees.

7. The record evidence in this case establishes that KLL violated Section 11.35(a) of the Rules. Section 11.35(a) of the Rules states that EAS Participants are responsible for ensuring that EAS Encoders, EAS Decoders, and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation.¹⁵ Section 11.35(a) also requires EAS participants to record in station logs the reasons why any EAS tests were not received.¹⁶ On February 7, 2013, a Denver agent inspected the Station's main studio in Salt Lake City, Utah, and found that the Station had no EAS logs. On February 8, 2013, a KLL representative informed the agent that the Station had no EAS records or logs. In its NOV Response, KLL acknowledged that the Station's EAS equipment was not monitoring the required local EAS sources, the required weekly and monthly tests were not being properly and regularly received and transmitted, a record of the deficiencies was not being made regularly in the station logs, and no EAS logs were being generated.¹⁷ Therefore, based on the evidence before us, we find that KLL apparently willfully and repeatedly violated Section 11.35(a) of the Rules by failing to maintain operational EAS equipment and logs.

B. Proposed Forfeiture and Reporting Requirement

8. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for failing to have operational EAS equipment is \$8,000, and the base forfeiture amount for failure to maintain required records is \$1,000.¹⁸ Applying the *Forfeiture Policy Statement*,

¹² 47 C.F.R. §§ 11.11, 11.41.

¹³ 47 C.F.R. §§ 11.1, 11.21.

¹⁴ 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS sources. 47 C.F.R. § 11.21.

¹⁵ 47 C.F.R. § 11.35(a). See also 47 C.F.R. § 73.1820(a)(1)(iii) (requiring licensees to create an entry for each test and activation of the EAS in the station log or in a special EAS log).

¹⁶ 47 C.F.R. § 11.35(a). See also 47 C.F.R. § 11.35(b) (requiring licensees to record when defective EAS equipment is removed from service).

¹⁷ See NOV Response at 2.

¹⁸ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), recons. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80. See *Centro Colegial Cristiano, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 329 (Enf. Bur. 2013) (proposing an \$8,000 forfeiture for failing to maintain fully operational EAS equipment); *Iglesia Cristiana Ebenezer of Greenville, TX*, Notice of Apparent Liability for

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Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that KLL is apparently liable for a total forfeiture of \$9,000 for failing to maintain operational EAS equipment and logs.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, KRCA License, LLC, is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of nine thousand dollars (\$9,000) for violation of Section 11.35(a) of the Commission's rules.¹⁹

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, KRCA License, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. KRCA License, LLC, will also send electronic notification on the date said payment is made to WR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁰ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

12. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²¹ If you have questions regarding payment

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Forfeiture and Order, 28 FCC Rcd 6300 (Enf. Bur. 2013) (proposing an \$8,000 forfeiture for failing to maintain fully operational EAS equipment with a \$1,000 upward adjustment for failing to maintain EAS logs).

¹⁹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204(b), 0.311, 0.314, 1.80, 11.35(a).

²⁰ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²¹ See 47 C.F.R. § 1.1914.

procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

13. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.²² Mail the written statement to Federal Communications Commission, Enforcement Bureau, Western Region, Denver Office, P.O. Box 25446, DFC Building 1A, One Denver Federal Center, Lakewood, Colorado, 80225, and include the NAL/Acct. No. referenced in the caption. KRCA License, LLC, also shall e-mail the written response to WR-Response@fcc.gov.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail, to KRCA License, LLC, at 1845 Empire Ave., Burbank, CA 91504, and Marnie K. Sarver, Esquire, Wiley Rein LLP, 1776 K Street, N.W., Washington DC 20006, its counsel of record.

FEDERAL COMMUNICATIONS COMMISSION

Nikki P. Shears
District Director
Denver Office
Western Region
Enforcement Bureau

²² 47 C.F.R. §§ 1.16, 1.80(f)(3).